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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1447

Introduced by Assembly Member Feuer
(Principal coauthor: Senator Lieu)
(Coauthors: Assembly Members Atkins and Dickinson)
(Coauthor: Senator Evans)

January 4, 2012

An act to add Sections 1795.51 and ~~2983.35~~ 2983.37 to the Civil Code, and to add Sections 241 and 241.1 to the Vehicle Code, relating to automobile sales.

LEGISLATIVE COUNSEL'S DIGEST

AB 1447, as amended, Feuer. Automobile sales finance: sellers.

The Rees-Levering Motor Vehicle Sales and Finance Act regulates conditional sales contracts for motor vehicles, and, among other things, requires a person selling or leasing a motor vehicle under a conditional sale contract to disclose certain information to the buyer of the vehicle. A willful violation of those provisions is a misdemeanor and may render the contract unenforceable. A seller who violates the provisions of the act may also be liable to the buyer for monetary damages.

This bill would require a buy-here-pay-here dealer, as defined, to issue a 30-day or 1,000-mile warranty to the buyer or lessee of a used vehicle bought or leased at retail price, and would require the warranty to cover the engine, transmission, drive axle, front and rear wheel drive components, engine cooling system, brakes, front and rear suspension systems, steering, seatbelts, inflatable restraint systems, catalytic converter or other emissions components, heater, seals and gaskets, electrical, electronic, and computer components, alternator, generator, starter, and ignition system. The bill would require the buy-here-pay-here dealer to either repair those covered parts that fail or, at the buy-here-pay-here dealer's election, to cancel the sale or lease and reimburse the buyer or lessee, as specified. The bill would require the buy-here-pay-here dealer to pay 100% of the cost of labor and parts for any repairs under the warranty. The bill would void an agreement for the purchase or lease of a vehicle that waives, limits, or disclaims these requirements. The bill would provide that a warranty is deemed to have been issued if a buy-here-pay-here dealer fails to issue a warranty pursuant to these provisions. The bill would prohibit a buy-here-pay-here dealer from requiring, ~~as part of a contract,~~ the buyer to make payments in person, with the exception of the downpayment for the vehicle ~~and specified deferred portions of the downpayment,~~ *would prohibit the buy-here-pay-here dealer from repossessing the vehicle or charging a penalty following timely payment of a deferred downpayment, as specified,* would prohibit the buy-here-pay-here dealer from, after the sale of the vehicle, tracking the vehicle using electronic tracking technology and from disabling the vehicle with starter interrupt technology, except as specified, and would make a violation of these prohibitions a misdemeanor punishable by a fine of up to \$1,000. By creating a new crime, this bill would impose a state-mandated local program. The bill would also make findings and declarations related to buy-here-pay-here dealers, *and would authorize the Department of Motor Vehicles to promulgate any necessary regulations.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) A growing number of Californians need cars to get to work
4 but cannot qualify for conventional automobile loans *and have*
5 *little or no negotiating leverage when purchasing a vehicle.*

6 (b) Some used car dealers, known as buy-here-pay-here, operate
7 a business model under which they stock and sell older,
8 high-mileage vehicles to consumers that cannot otherwise qualify
9 for conventional automobile loans. Unlike traditional new and
10 used car dealers, buy-here-pay-here dealers do not assign sales
11 and lease contracts they generate to third-party finance or lease
12 sources. Because buy-here-pay-here dealers maintain and
13 administer their own sales and lease contract portfolios, they do
14 not have to comply with underwriting and loan policies set by
15 traditional lenders and are free to set financial terms that are
16 significantly higher than conventional automobile loans or leases,
17 *often including large downpayments.*

18 ~~(c) Consumers who have little or no alternative other than to~~
19 ~~buy or lease a used vehicle from a buy-here-pay-here dealer are~~
20 ~~vulnerable to unfair or deceptive practices by buy-here-pay-here~~
21 ~~dealers.~~

22 (c) *Older, high-mileage vehicles are more likely to have*
23 *mechanical problems than newer vehicles. The typical inventory*
24 *of buy-here-pay-here dealers consists of vehicles with 90,000 to*
25 *130,000 miles.*

26 (d) *Consumers throughout California have complained about*
27 *the mechanical problems that they have had with vehicles*
28 *purchased from buy-here-pay-here dealers. These problems have*
29 *often emerged within days or weeks of the consumer purchasing*
30 *the vehicle.*

31 (e) *As detailed in media reports, it is not uncommon for*
32 *buy-here-pay-here dealers to sell 25 percent or more of their cars*
33 *multiple times following repossession. The practice of selling older,*
34 *high-mileage vehicles for large downpayments and at exorbitant*
35 *interest rates, followed by repossession and a new sales*
36 *opportunity, may be particularly profitable for buy-here-pay-here*
37 *dealers but can represent a financial danger for consumers.*

1 (f) *The costs of repairs for many consumers with*
2 *buy-here-pay-here vehicles often approach or exceed the cost of*
3 *the vehicle itself.*

4 (g) *The absence of any minimum warranty requirements on*
5 *buy-here-pay-here dealers leaves California consumers vulnerable*
6 *to financial harm.*

7 (h) *While buy-here-pay-here dealers claim that they help*
8 *financially struggling consumers to reestablish their credit and*
9 *become financially independent by providing them with financing*
10 *and a reliable mode of transportation, the reality is that*
11 *approximately 25 percent of buy-here-pay-here vehicles are*
12 *repossessed, and those repossessions are often the result of*
13 *consumers ceasing payment because the vehicle has fundamentally*
14 *failed to perform as a reliable mode of transportation.*

15 (i) *Buy-here-pay-here dealers often employ the use of electronic*
16 *tracking technology and starter interrupt technology to increase*
17 *the ease with which they repossess vehicles. Yet inadequate*
18 *protections are in place to ensure that consumers are aware of*
19 *the use of this technology and to ensure that the utilization of this*
20 *technology does not jeopardize the safety and privacy of the*
21 *consumer.*

22 ~~(d)~~

23 (j) *It is the intent of the Legislature in enacting this act to curb*
24 *unfair and deceptive practices by buy-here-pay-here dealers and*
25 *to protect the consuming public.*

26 SEC. 2. Section 1795.51 is added to the Civil Code, to read:

27 1795.51. (a) No buy-here-pay-here dealer, as that term is
28 defined in Section 241 of the Vehicle Code, shall sell or lease a
29 used vehicle, as defined in Section 665 of the Vehicle Code, at
30 retail price without giving the buyer or lessee a written warranty
31 that shall have a minimum duration of at least 30 days from the
32 date of delivery or when the odometer has registered 1,000 miles
33 from what is shown on the contract, whichever occurs first.

34 (b) The written warranty shall provide that if the buyer or lessee
35 notifies the buy-here-pay-here dealer that the vehicle does not
36 conform to the written warranty, the buy-here-pay-here dealer
37 shall either repair the vehicle to conform to the written warranty,
38 reimburse the buyer or lessee for the reasonable cost of repairs, or
39 cancel the sale or lease contract and provide the buyer or lessee
40 with a full refund, less a reasonable amount for any damage

1 sustained by the vehicle after the sale or lease, excepting damage
2 caused by any nonconformity with the written warranty.

3 (c) The written warranty shall provide that the buy-here-pay-here
4 dealer shall pay 100 percent of the cost of labor and parts for any
5 repairs pursuant to the warranty, and may not charge the buyer or
6 lessee for the cost of repairs or for inspecting the vehicle, tearing
7 down the engine or transmission or other part, or for any
8 deductible. Any person performing repairs pursuant to this
9 subdivision shall comply with the requirements of an automotive
10 repair dealer pursuant to Chapter 20.3 (commencing with Section
11 9880) of Division 3 of the Business and Professions Code.

12 (d) The buy-here-pay-here dealer or its agent may elect to refund
13 the buyer or lessee a full refund, less a reasonable amount for any
14 damage sustained by the vehicle after the sale or lease, excepting
15 damage caused by any nonconformity with the written warranty,
16 rather than performing a repair. In the event that the
17 buy-here-pay-here dealer cancels the sale or lease, all of the
18 following shall apply:

19 (1) The buy-here-pay-here dealer shall ~~given~~ *give* written notice
20 to the buyer or lessee of the election to cancel the sale or lease by
21 personal delivery or first-class mail.

22 (2) The buyer or lessee shall return the vehicle in substantially
23 the same condition as when it was delivered by the
24 buy-here-pay-here dealer, reasonable wear and tear and any
25 nonconformity with the written warranty excepted.

26 (3) The buy-here-pay-here dealer shall provide the buyer or
27 lessee with a receipt stating all of the following:

28 (A) The date the vehicle was returned to the buy-here-pay-here
29 dealer.

30 (B) The vehicle identification number.

31 (C) The make, year, and model of the vehicle.

32 (D) The odometer reading at the time that the vehicle was
33 returned to the buy-here-pay-here dealer.

34 (E) A statement that the buy-here-pay-here dealer has canceled
35 the sale or lease.

36 (F) The amount of the buyer's or lessee's refund.

37 (4) The buy-here-pay-here dealer shall not treat the return of
38 the vehicle pursuant to the contract cancellation provisions of this
39 subdivision as a repossession.

1 (5) The buyer or lessee shall execute the documents necessary
2 to transfer any interest in the vehicle to the buy-here-pay-here
3 dealer or to remove the buyer or lessee from any registration or
4 title documents.

5 (6) The buy-here-pay-here dealer shall refund to the buyer or
6 lessee, no later than the day after the day on which the buyer or
7 lessee returns the vehicle and the notice of election to cancel is
8 given to the buyer or lessee, all amounts paid under the sale or
9 lease agreement, less a reasonable amount for property damage
10 sustained by the vehicle after the sale or lease, excepting damage
11 caused by any nonconformity with the warranty.

12 (e) The written warranty shall cover at least the following
13 components:

14 (1) Engine, including all internally lubricated parts.

15 (2) Transmission and transaxle.

16 (3) Front and rear wheel drive components.

17 (4) Engine cooling system.

18 (5) Alternator, generator, starter, and ignition system, not
19 including the battery.

20 (6) Braking system.

21 (7) Front and rear suspension systems.

22 (8) Steering system and components.

23 (9) Seatbelts.

24 (10) Inflatable restraint systems installed on the vehicle as
25 originally manufactured.

26 (11) Catalytic converter and other emissions components
27 necessary for the vehicle to pass a California emissions test.

28 (12) Heater.

29 (13) Seals and gaskets on components described in this
30 subdivision.

31 (14) Electrical, electronic, and computer components, to the
32 extent that those components substantially affect the functionality
33 of other components described in this subdivision.

34 (f) Any Used Car Buyer's Guide displayed on a vehicle offered
35 for sale or lease by a buy-here-pay-here dealer shall list each of
36 the above systems and components and shall specify that the
37 buy-here-pay-here dealer will pay 100 percent of the cost of parts
38 and labor for repairs covered by the warranty.

39 (g) The buy-here-pay-here dealer shall make the repair or
40 provide a refund notwithstanding the fact that the warranty period

1 has expired if the buyer or lessee notified the buy-here-pay-here
2 dealer of the failure of a covered system or part within the warranty
3 period.

4 (h) This section shall not apply to any defect or nonconformity
5 caused by the unauthorized or unreasonable use of the vehicle
6 following the sale, or to any property damage not to the vehicle
7 arising out of the failure of a covered part.

8 (i) In any proceeding in which the exclusion of coverage
9 permitted by subdivision (h) or the deduction allowed by paragraph
10 (6) of subdivision (d) is an issue, the buy-here-pay-here dealer
11 shall have the burden of proof.

12 (j) A buy-here-pay-here dealer shall not sell or lease any vehicle
13 unless the vehicle meets all of the equipment requirements of
14 Division 12 (commencing with Section 24000) of the Vehicle
15 Code.

16 (k) Any agreement between a buy-here-pay-here dealer and a
17 buyer or lessee that disclaims, limits, or waives the rights set forth
18 in this section shall be void as contrary to public policy.

19 (l) If a buy-here-pay-here dealer fails to give a buyer a written
20 warranty pursuant to this section, the buy-here-pay-here dealer
21 shall be deemed to have provided the warranty as a matter of law.

22 SEC. 3. Section 2983.352983.37 is added to the Civil Code,
23 to read:

24 ~~2983.35.~~

25 2983.37. (a) After a sale of a vehicle under this chapter, a
26 buy-here-pay-here dealer, as defined in Section 241 of the Vehicle
27 Code, shall not do any of the following:

28 (1) Utilize electronic tracking technology to obtain or record
29 the location of the vehicle, unless the buyer is expressly made
30 aware of the existence and use of the tracking technology by the
31 buy-here-pay-here dealer, the buyer's written consent is obtained,
32 and either subparagraph (A) or (B), or both, apply:

33 (A) The electronic tracking technology is used solely to verify
34 and maintain the operational status of the tracking technology, to
35 repossess the vehicle, or to locate the vehicle to service the loan
36 or keep the loan current.

37 (B) The electronic tracking technology is used solely for any
38 optional service to the buyer and both of the following conditions
39 are met:

(i) The agreement to utilize electronic tracking technology for the optional service is separate from the purchase and sale agreement, is not a condition of the purchase or sale agreement for the vehicle, and is executed after the completion of the purchase or sale agreement for the vehicle.

(ii) The buyer is permitted to cancel the optional service at any point in the future without affecting the sale of the vehicle, and is informed of his or her ability to do so.

(2) Disable the vehicle by using starter interrupt technology, unless the buy-here-pay-here dealer complies with all of the following provisions:

(A) Notifies the buyer in writing at the time of the sale that the vehicle is equipped with starter interrupt technology, which the buy-here-pay-here dealer can use to shut down the vehicle remotely.

(B) The written disclosure provided to the buyer at the time of sale informs the buyer that a warning will be provided no less than 48 hours before the use of the starter interrupt technology to shut down the vehicle remotely and discloses the manner and method in which that warning will occur. The dealer shall offer the buyer a choice of warning methods, including warning from the device, telephone call, email, or text message, if available, provided that the warning method does not violate applicable state or federal law.

(C) In the event of an emergency, the buyer will be provided with the ability to start a dealer-disabled vehicle for no less than 24 hours after the vehicle's initial disablement.

(b) A buy-here-pay-here dealer shall not require the buyer to make payments to the seller in person. For purposes of this subdivision, "payments" does not include the ~~downpayment, including any portion of the downpayment that is deferred until not later than the second otherwise scheduled payment and that is not subject to a finance charge.~~ *downpayment. If the buyer tenders timely payment of a deferred downpayment, the dealer shall not repossess the vehicle or impose any other charge or penalty on the grounds that the payment was not made in person.*

(c) A violation of this section is a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000).

SEC. 4. Section 241 is added to the Vehicle Code, to read:

1 241. A “buy-here-pay-here” dealer is a dealer, as defined in
2 Section 285, who is not otherwise expressly excluded by Section
3 241.1, and who does all of the following:

4 (a) Enters into conditional sale contracts, within the meaning
5 of subdivision (a) of Section 2981 of the Civil Code, and subject
6 to the provisions of Chapter 2b (commencing with Section 2981)
7 of Title 14 of Part 4 of Division 3 of the Civil Code, or lease
8 contracts, within the meaning of Section 2985.7 of the Civil Code,
9 and subject to the provisions of Chapter 2d (commencing with
10 Section 2985.7) of Title 14 of Part 4 of Division 3 of the Civil
11 Code.

12 (b) Assigns less than 90 percent of all unrescinded conditional
13 sale contracts and lease contracts to unaffiliated third-party finance
14 or leasing sources within ~~60~~ 45 days of the consummation of those
15 contracts.

16 (c) *For purposes of this section, a conditional sale contract*
17 *does not include a contract for the sale of a motor vehicle if all*
18 *amounts owed under the contract are paid in full within 30 days.*

19 (d) *The department may promulgate regulations as necessary*
20 *to implement this section.*

21 SEC. 5. Section 241.1 is added to the Vehicle Code, to read:

22 241.1. The term “buy-here-pay-here” dealer does not include
23 any of the following:

24 (a) A lessor who primarily leases vehicles that are two model
25 years old or newer.

26 (b) A dealer that does both of the following:

27 (1) Certifies 100 percent of used vehicle inventory offered for
28 sale at retail price pursuant to Section 11713.18.

29 (2) Maintains an onsite service and repair facility that is licensed
30 by the Bureau of Automotive Repair and employs a minimum of
31 five master automobile technicians that are certified by the National
32 Institute for Automotive Service Excellence.

33 SEC. 6. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O